

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

**NATIONAL FITNESS CENTER, INC.,
and COURT SOUTH TOTAL
CONDITIONING CLUBS, LLC,**

Plaintiffs,

vs.

**ATLANTA FITNESS d/b/a CUSTOM
BUILT PERSONAL FITNESS, and
STEPHEN DOW, individually,**

Defendants.

No. 3:09-cv-133

(Campbell/Shirley)

ORDER

Defendants/Counter-Claimants Atlanta Fitness, Inc. d/b/a Custom Built Personal Training and Stephen Dow (collectively “Custom Built”), have moved under Rule 59(e) of the Federal Rules of Civil Procedure, for reconsideration of this court’s October 10, 2012 Order (Docket No. 49). In the Order, the court granted in part and denied in part Custom Built’s Motion for Summary Judgment. Custom Built asks this court to reconsider the portion of the ruling regarding the parties’ competing breach of contract claims and Custom Built’s promissory fraud claim.

A motion for reconsideration under Fed. R. Civ. P. 59(e) “may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to

prevent manifest injustice.” GenCorp, Inc. v. Am. Int’l Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) (citations omitted). Custom Built contends that the court committed clear error of law by holding that the last sentence of Paragraph 13 in the Agreement was inconsistent with Custom Built’s exclusive right to sell personal training sessions, and by holding that because the ambiguity could not be resolved by the parole evidence, the issue must be decided by a jury.

The court has reviewed the motion for reconsideration, along with all relevant pleadings and supporting papers, and has reviewed its October 10, 2012 Order. Based on that review, the court finds, once again, that the Agreement is ambiguous for the reasons stated in the original order and that the evidence cited by Custom Built in its pleadings supporting its motion to reconsider does not clear up the ambiguity. Accordingly, the motion for reconsideration is DENIED.

SO ORDERED this 9th day of November, 2012.

BY THE COURT:


TENA CAMPBELL
U.S. District Court Judge